



February 2, 2007

HOUSE BILL No. 1195

DIGEST OF HB 1195 (Updated January 30, 2007 1:51 pm - DI 92)

Citations Affected: IC 6-3.1; noncode.

Synopsis: Community investment tax credits. Establishes a community investment tax credit against state tax liability for investments that: (1) qualify for a federal new market tax credit; and (2) are made in a community development entity that agrees to reinvest 80% of its total assets in low income community businesses in Indiana.

Effective: January 1, 2008.

Crawford

January 11, 2007, read first time and referred to Committee on Ways and Means.
February 1, 2007, amended, reported — Do Pass.

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HB 1195—LS 7037/DI 116+



February 2, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1195

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-31 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2008]:

4 **Chapter 31. Community Investment Tax Credit**

5 **Sec. 1. As used in this chapter, "affiliate" means the following:**

6 (1) A parent entity that owns a controlling interest in a
7 federally qualified community development entity.

8 (2) Any subsidiary of a parent entity described in subdivision

9 (1) that qualifies as a federally qualified community
10 development entity.

11 **Sec. 2. As used in this chapter, "applicable percentage" means**
12 **five percent (5%) for each credit allowance date.**

13 **Sec. 3. As used in this chapter, "certified development entity"**
14 **refers to a federally qualified community development entity that**
15 **is certified by the corporation as a certified development entity**
16 **under section 24 of this chapter.**

17 **Sec. 4. As used in this chapter, "corporation" refers to the**

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HB 1195—LS 7037/DI 116+



1 Indiana economic development corporation.

2 Sec. 5. As used in this chapter, "credit allowance date" means:

- 3 (1) the date the corporation certifies a federally qualified
4 equity investment as a state credit; and
5 (2) the anniversary of the date described in subdivision (1) in
6 each calendar year remaining in the certified development
7 entity's federal credit period.

8 Sec. 6. As used in this chapter, "department" refers to the
9 department of state revenue.

10 Sec. 7. As used in this chapter, "eligible business" means a
11 business that:

- 12 (1) qualifies as a low income community business; and
13 (2) is located in Indiana.

14 Sec. 8. As used in this chapter, "federal credit" refers to a new
15 markets tax credit granted under Section 45D of the Internal
16 Revenue Code against federal income tax liability.

17 Sec. 9. As used in this chapter, "federally qualified community
18 development entity" refers to a qualified community development
19 entity (as defined in Section 45D of the Internal Revenue Code)
20 that has an allocation of federal credits.

21 Sec. 10. As used in this chapter, "federally qualified equity
22 investment" refers to a qualified equity investment (as defined in
23 Section 45D of the Internal Revenue Code) that qualifies a federal
24 taxpayer for a federal credit.

25 Sec. 11. As used in this chapter, "holder", with respect to a
26 credit allowance date, refers to one (1) of the following:

- 27 (1) The taxpayer or pass through entity that makes the
28 original state certified investment, if the taxpayer or pass
29 through entity owns the state certified investment on a credit
30 allowance date.
31 (2) A subsequent taxpayer or pass through entity that owns
32 the state certified investment on a credit allowance date.

33 Sec. 12. As used in this chapter, "low income community
34 business" refers to a business that qualifies as a qualified active
35 low-income community business (as defined in Section 45D of the
36 Internal Revenue Code).

37 Sec. 13. As used in this chapter, "pass through entity" means a:

- 38 (1) corporation that is exempt from the adjusted gross income
39 tax under IC 6-3-2-2.8(2);
40 (2) partnership;
41 (3) trust;
42 (4) limited liability company; or

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(5) limited liability partnership;
that is not subject to state tax liability.

Sec. 14. As used in this chapter, "reinvestment in low income communities in Indiana" refers to the use of the assets of a federally qualified community development entity for:

- (1) a capital or an equity investment or loan to an eligible business;
- (2) an equity investment in or a loan to a federally qualified community development entity that is located in Indiana;
- (3) the delivery of financial counseling or other services to a business in or resident of Indiana; or
- (4) a purchase from another federally qualified community development entity of loans that are made to an eligible business;

that qualifies as a qualified low-income community investment (as defined in Section 45D of the Internal Revenue Code).

Sec. 15. As used in this chapter, "state certified investment" refers to a federally qualified equity investment that is certified by the corporation as eligible for a state credit.

Sec. 16. As used in this chapter, "state credit" refers to a credit granted under this chapter against state tax liability.

Sec. 17. As used in this chapter, "state tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that under IC 6-3.1-1-2 are to be applied before the credit provided by this chapter.

Sec. 18. As used in this chapter, "taxpayer" means an individual, a corporation, a partnership, or another entity that has state tax liability.

Sec. 19. Subject to this chapter, a holder that:

- (1) holds a state certified investment on a credit allowance date; and
- (2) does not receive another credit under any other law against state tax liability for the same state certified investment;

is entitled to a community investment tax credit in a taxable year in which a credit allowance date occurs against the holder's state tax liability for the taxable year.

Sec. 20. The amount of a state credit in a taxable year is equal

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to the amount determined under STEP TWO of the following formula:

STEP ONE: Determine the amount of the state certified investment that is held by a taxpayer on the credit allowance date in the taxable year.

STEP TWO: Multiply the STEP ONE amount by the applicable percentage for the credit allowance date.

Sec. 21. (a) If:

(1) a pass through entity does not have state tax liability against which the state credit may be applied; and

(2) the pass through entity would be eligible for a state credit if the pass through entity were a taxpayer;

a shareholder, partner, or member of the pass through entity is entitled to a state credit under this chapter.

(b) Subject to this chapter, the amount of the state credit to which a shareholder, partner, or member of a pass through entity is entitled is the result determined under STEP TWO of the following formula:

STEP ONE: Determine the amount of a state credit for the pass through entity for the taxable year as if the pass through entity were a taxpayer with state tax liability at least equal to the amount of the credit.

STEP TWO: Determine the STEP ONE result multiplied by the percentage of the pass through entity's allocable share of federal credits to which the shareholder, partner, or member is entitled, as determined for federal income tax purposes.

Sec. 22. (a) If the amount of a state credit for a taxpayer in a taxable year exceeds the taxpayer's state tax liability for that taxable year, the taxpayer may carry the excess over to not more than three (3) subsequent taxable years. The amount of the state credit carryover from a taxable year shall be reduced to the extent that the carryover is used by the taxpayer to obtain a state credit under this chapter for any subsequent taxable year.

(b) A taxpayer is not entitled to a carryback or refund of an unused state credit.

Sec. 23. To apply a state credit against the taxpayer's state tax liability, a taxpayer must claim the state credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. A taxpayer claiming a state credit shall submit to the department a copy of the certification letter issued by the corporation under section 25 of this chapter for the state certified investment that entitles the taxpayer to a state credit. In addition,

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the taxpayer shall submit to the department any additional information that the department determines is necessary for the department to determine whether the taxpayer is eligible for the state credit.

Sec. 24. (a) The corporation shall establish a program to certify federally qualified community investment entities as certified development entities.

(b) An applicant must apply to the corporation for certification in the manner and on the certified development entity application form prescribed by the corporation.

(c) The corporation shall certify an applicant as a certified development entity only if the:

- (1) applicant is a federally qualified community development entity;
- (2) applicant and its affiliates by agreement with the corporation commit to continue to loan to or otherwise reinvest in eligible businesses for a period of at least seven (7) years concurrent with the federal credit period; and
- (3) agreement with the corporation commits to invest at least eighty percent (80%) of the applicant's aggregate gross assets (including reserves) in eligible businesses.

Sec. 25. (a) The corporation shall establish a program to certify federally qualified equity investments as state certified investments.

(b) The corporation may certify a federally qualified equity investment as a state certified investment only if:

- (1) a certified development entity designates the federally qualified equity investment for a state credit in a manner and on the designation form prescribed by the president of the corporation; and
- (2) the certified development entity that designates the qualified equity investment for a state credit and its affiliates are in compliance with the agreements entered into by the certified development entity and its affiliates under section 24 of this chapter.

(c) The certification of a federally qualified equity investment under this section applies only to credit allowance dates that occur after the certification is made by the corporation.

(d) The corporation shall issue a letter to the certified development entity indicating whether the corporation certifies the federally qualified equity investment as a state certified investment.

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1 **Sec. 26. (a)** An action by the federal government under Section
 2 **45D** of the Internal Revenue Code to disallow or recapture a
 3 federal credit for a qualified equity investment terminates the state
 4 credit only to the extent that the corporation disallows or
 5 recaptures the state credit under this section.

6 **(b)** A holder of a state certified investment shall notify the
 7 corporation if the holder's federal credit for the state certified
 8 investment is disallowed or recaptured.

9 **(c)** If the federal credit granted for a state certified investment
 10 is disallowed or recaptured, the corporation may:

11 **(1)** disallow the use of a part of the related unused state
 12 credit;

13 **(2)** recapture a part of the related state credit that has been
 14 applied to the state tax liability of a taxpayer; or

15 **(3)** both disallow under subdivision (1) and recapture under
 16 subdivision (2) the state credit.

17 The maximum percentage of the state credit that may be
 18 disallowed and recaptured under this section is the percentage of
 19 the total federal credit that is disallowed or recaptured under
 20 Section 45D of the Internal Revenue Code.

21 **(d)** The corporation shall submit a copy of the corporation's
 22 determination under this section to the department.

23 **Sec. 27. (a)** Before April 1 each year:

24 **(1)** after the initial year that a federally qualified community
 25 development entity is certified as a certified development
 26 entity; and

27 **(2)** through the seventh year after the last credit allowance
 28 date for the certified development entity's last state certified
 29 investment;

30 the certified development entity shall submit a report to the
 31 corporation on the certified development entity's state credit
 32 program under this chapter.

33 **(b)** The report required by this section is the annual report of
 34 the certified development entity for that year that is filed for
 35 federal reporting purposes with the community development
 36 financial institutions fund. The corporation may require additional
 37 information in its discretion, including the following:

38 **(1)** Information on the number and amount of state certified
 39 investments and federally qualified equity investments made
 40 by the entity in Indiana.

41 **(2)** A description of each eligible business receiving an
 42 investment attributable to a state certified investment.

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(3) An update on the financial status of the eligible businesses.

(4) An update on new jobs, increasing wages, total investment, and revenue impact derived from the state certified investment.

(5) The sum of the state credits designated by the certified development entity under this chapter.

(c) The corporation shall submit a copy of the report required by this section to the executive director of the legislative services agency. The report must be in an electronic format under IC 5-14-6.

Sec. 28. Before November 1 in each state fiscal year beginning in an odd-numbered year, the corporation shall provide an evaluation of the state credit program. The evaluation must include an assessment of the:

(1) effectiveness of each certified development entity that receives a state certified investment in creating new jobs and increasing wages in Indiana; and

(2) revenue impact of the certified development entity's state credit program.

The evaluation may include a review of the practices and experiences of other states with similar programs or other similar federal programs. The corporation shall submit the evaluation to the governor and the executive director of the legislative services agency. The report submitted to the executive director of the legislative services agency must be in an electronic format under IC 5-14-6.

Sec. 29. The corporation may adopt rules under IC 4-22-2 to carry out the purposes of this chapter, including rules to do the following:

(1) Facilitate the transfer of state credits earned under this chapter.

(2) Certify an investment for a state credit before the investment has received final approval for a federal credit subject to the condition that the state credit is disallowed if the federal credit is not granted.

SECTION 2. [EFFECTIVE JANUARY 1, 2008] (a) The definitions in IC 6-3.1-31, as added by this act, apply throughout this SECTION.

(b) IC 6-3.1-31, as added by this act, applies only to:

(1) federally qualified equity investments initially made; and

(2) taxable years beginning;

after December 31, 2007.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1195, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 14, delete "investment" and insert "**development**".

Page 2, delete lines 2 through 4, begin a new paragraph and insert:

"Sec. 5. As used in this chapter, "credit allowance date" means:

(1) the date the corporation certifies a federally qualified equity investment as a state credit; and

(2) the anniversary of the date described in subdivision (1) in each calendar year remaining in the certified development entity's federal credit period."

Page 4, line 21, delete "distributive income" and insert "**allocable share of federal credits**".

Page 5, line 10, delete "investment" and insert "**development**".

Page 5, delete lines 12 through 21.

Page 5, line 22, delete "(5)" and insert "**(2)**".

Page 5, line 24, delete "fourteen" and insert "**seven (7) years concurrent with the federal credit period; and**".

Page 5, delete lines 25 through 28.

Page 5, line 29, delete "(6) applicant by" and insert "**(3)**".

Page 6, line 36, delete "investment" and insert "**development**".

Page 6, line 38, delete "before the fifteenth" and insert "**through the seventh**".

Page 7, line 2, delete "must include the" and insert "**is the annual report of the certified development entity for that year that is filed for federal reporting purposes with the community development financial institutions fund. The corporation may require additional information in its discretion, including the following:**".

Page 7, delete line 3.

Page 7, line 7, delete "certified" and insert "**eligible**".

Page 7, line 9, delete "certified" and insert "**eligible**".

and when so amended that said bill do pass.

(Reference is to HB 1195 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 18, nays 4.

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